

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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JOSEPH SOHM and VISIONS OF AMERICA, LLC	: Case No. 16-cv-7098 (JPO)
	: :
Plaintiffs,	: ECF Case
	: :
-against-	: <b>FIRST AMENDED COMPLAINT</b>
	: :
SCHOLASTIC, INC.,	: DEMAND FOR JURY TRIAL
	: :
Defendant.	: :
	: :
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Plaintiff Joseph Sohm (“Sohm”) and Visions of America, LLC (“VOA”) for their First Amended Complaint against Scholastic, Inc. (“Scholastic”) alleges:

**STATEMENT OF ACTION**

1. This is an action for copyright infringement brought by Sohm and VOA, the owners of copyrights to the photographs described hereafter and originally licensed for limited use by Scholastic, against Scholastic for unauthorized uses of his photographs.

**PARTIES**

2. Joseph Sohm is a professional photographer who licenses photographic images to publishers, including Scholastic. He is a resident of Oak View, California.

3. Visions of America, LLC is a California limited liability company, solely owned by Joseph Sohm, with its principle place of business in Oak View, California.

4. Scholastic is a New York corporation that maintains its principal place of business at 557 Broadway, New York, NY 10012. As the world’s largest publisher and distributor of children’s books, Scholastic sells and distributes its publications in the Southern District of New York, throughout the United States, and overseas, including the publications and ancillary materials in which Plaintiffs’ photographs are unlawfully reproduced.

**JURISDICTION**

5. This is an action for injunctive relief, statutory damages, monetary damages, and

interest under the copyright laws of the United States. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 (federal question), 1338 (copyright), and 1367 (supplemental jurisdiction).

### **VENUE**

6. Venue is appropriate in this District pursuant to 28 U.S.C. §§ 1391(a) and (b) and 28 U.S.C. § 1400(a).

### **FACTS**

7. Sohm is the creator and owner of copyrights in the attached photographic images (“Photographs”) depicted in Exhibits 1, 2, 3, 4, and 5.

8. Alternatively, if deemed to be works for hire, VOA owns copyrights in the Photographs.

9. As set forth in Exhibits 1-5, the Photographs have been registered with the United States Copyright Office.

10. Plaintiffs entered into agreements with stock photography agencies Corbis Corporation, Jupiter Images Corporation, Photo Researchers, Inc., Stock Boston, and The Image Works (“Agencies”), authorizing them to grant limited licenses for use of the Photographs to Scholastic.

11. Between 1995 and 2011, in response to permission requests from Scholastic, Plaintiffs – acting through the Agencies – sold Scholastic limited licenses to use copies of the Photographs in particular educational publications identified in Scholastic’s requests, as itemized in Exhibits 1-5. The licenses granted Scholastic were expressly limited by number of copies, distribution area, language, duration, and/or media.

12. Upon information and belief, after obtaining the licenses from Plaintiffs, Scholastic exceeded the licenses and infringed Plaintiffs’ copyrights in the Photographs in various ways, including:

- a. printing more copies of the Photographs than authorized;
- b. distributing publications containing the Photographs outside the authorized distribution area;

- c. publishing the Photographs in electronic, ancillary, or derivative publications without permission;
- d. publishing the Photographs in international editions and foreign publications without permission; and/or
- e. publishing the Photographs beyond the specified time limits.

13. Upon information and belief, after obtaining access to the Photographs, Scholastic also used them without any license or permission in additional publications that have not yet been identified. Because Scholastic alone knows of these wholly unauthorized uses, Plaintiffs cannot further identify them without discovery.

14. Scholastic alone knows the full extent to which it has infringed Plaintiffs' copyrights by making unauthorized uses of the Photographs, but it has not shared this knowledge with Plaintiffs.

15. Since 2011, Scholastic (or its parent, Scholastic Corporation) has been sued for copyright infringement in furtherance of its under-licensing practices in at least the following actions:

- a. *Palmer Kane LLC v. Scholastic Corporation*, No. 11-cv-07456 (S.D.N.Y.);
  - b. *Palmer/Kane LLC v. Scholastic Corporation and Scholastic, Inc.*, No. 14-cv-07805 (S.D.N.Y.);
  - c. *David Young-Wolff, The Estate of Michael Newman, Laura Dwight, Ed Bock, and Lief Skoogfors v. Scholastic Corporation*, No. 14-cv-05089 (S.D.N.Y.);
  - d. *Keller v. Scholastic, Inc.*, No. 16-cv-01829 (E.D. PA);
  - e. *Jose Luis Pelaez, Inc. v. Scholastic, Inc.*, No. 16-cv-02791 (S.D.N.Y.);
  - f. *Frans Lanting, Inc. v. Scholastic Inc.*, No. 15-cv-05671 (C.A.N.D.);
  - g. *Bob Daemmrigh Photography, Inc. v. Scholastic Inc.*, 15-cv-01150;
  - h. *Lewine v. Scholastic Corporation*, No. 15-cv-05731 (S.D.N.Y.).
16. All exhibits attached hereto are incorporated into this Complaint by this reference.

## COUNT I

### *Copyright infringement against Scholastic*

17. Plaintiffs incorporate herein by this reference each and every allegation contained in the paragraphs set forth above.

18. The foregoing acts of Scholastic constitute infringements of Plaintiffs' copyrights in the Photographs in violation of 17 U.S.C. §§ 501 *et seq.*

19. Plaintiffs suffered damages as a result of Scholastic's unauthorized use of the Photographs.

**WHEREFORE**, Plaintiffs request the following:

1. A preliminary and permanent injunction against Defendant and anyone working in concert with Defendant from copying, displaying, distributing, selling or offering to sell Plaintiffs' Photographs described in this Complaint and Plaintiffs' photographs not included in suit.

2. As permitted under 17 U.S.C. § 503, impoundment of all copies of Plaintiff's Photographs used in violation of Plaintiffs' exclusive copyrights as well as all related records and documents and, at final judgment, destruction or other reasonable disposition of the unlawfully used Photographs, including digital files and any other means by which they could be used again by Defendant without Plaintiffs' authorization.

3. An award of Plaintiffs' actual damages and all profits derived from the unauthorized use of Plaintiffs' Photographs or, where applicable and at Plaintiffs' election, statutory damages.

4. An award of Plaintiffs' reasonable attorneys' fees.

5. An award of Plaintiffs' court costs, expert witness fees, interest and all other amounts authorized under law.

6. Such other and further relief as the Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiffs demand a trial by jury of all issues permitted by law.

DATED: October 24, 2016

Plaintiffs Joseph Sohm and Visions of America, LLC,  
by their attorneys,

/s/ Christopher Seidman

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